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In view of this possible construction of this section, it would appear desirable that it be amended by specifically excepting the remarriage of the same parties from the application of its provisions.

R. Y. B.

MARRIED WOMEN—RIGHT OF HUSBAND AND WIFE TO BECOME PARTNERS—EFFECT OF VA. CODE, § 5134.—The common law rule was that it was impossible for a married woman to form partnerships, since she was disabled, generally, to contract or to engage in trade, and husband and wife were wholly incapacitated to contract with each other.¹ Hence, in order that such a relationship might be established, the right to enter into it must be conferred by constitutional enactment or by statute.

In many States, the common law rule has been changed by statute as to the contractual rights and obligations of married women in respect to their separate estates. Under such a statute, it has been held that husband and wife cannot enter into a contract of partnership as between themselves and thereby render themselves jointly liable as copartners.² This ruling has been upheld in many jurisdictions, where statutes do not give married women the contractual rights of a *feme sole*.³ And it is sometimes so held under statutes apparently allowing her full rights to contract and to engage in business as if *feme sole*.⁴

In *Artman v. Ferguson*, *supra*, Long, J., in delivering the opinion of the court, said:

"It has been held by a great preponderance of authorities, even under the broadest statutes, that a married woman has no capacity to form a partnership with her husband, or in other words, to become a member of a firm in which her husband is a partner, even in those states in which she may embark in another partnership; and though she holds herself out as a partner, and her means give credit to the firm, she is held not liable for the debts, as she cannot, by acts or declarations, remove her own disabilities."

This view is further expounded by Hoar, J., in delivering the opinion of the court in *Lord v. Parker*,⁵ in which he said:

"The power to form a copartnership includes the power to create a community of property, with a joint power of disposal, and a mutual liability for the contracts and acts of all the partners. To enter into a partnership in business with

¹ MECHEM, ELEMENTS OF PARTNERSHIP, p. 19.

² *Artman v. Ferguson*, 73 Mich. 146, 16 Am. St. Rep. 572.

³ *Gilkerson-Sloss Commission Co. v. Salinger*, 56 Ark. 294, 35 Am. St. Rep. 105.

⁴ *Seattle Board of Trade v. Hayden*, 4 Wash. 263, 16 L. R. A. 530.

⁵ 3 Allen (Mass.) 127.

her husband would subject her property to his control in a manner hardly consistent with the separation which it is the purpose of the statute to secure, and might subject her to an indefinite liability for his engagements. The property invested in such an enterprise would cease to be her 'sole and separate' property. The power to arrange the terms of such a contract would open a wide door to fraud in relation to the property of the husband."

The tendency of modern statutes has been further to emancipate married women from the disabilities imposed upon them by the common law. Under such statutes, it has been held in a number of States that a married woman is capable of entering into a partnership with her husband as if she were a *feme sole*.⁶ In *Swan v. Caffé*, *supra*, the New York statute provided that a married woman may carry on business on her sole and separate account.⁷ *Schlapbach v. Long*, *supra*, depends upon the Alabama statute which provided that the earnings of the wife are her separate property, that she shall have the control and management of her separate estate, and is entitled to the rents and profits thereof, and that the husband and wife may contract with each other.⁸

There seems to be no decision under the latest statute in Virginia bearing directly on the question involved. The Code of 1887 specifically denied to the wife the right to become her husband's partner. § 2287 of that Code provided that a married woman might engage in trade and carry on business, *but not as a partner with her husband*.

This section was repealed by Acts 1899-1900, p. 1240; and § 5134 of the present Code provides:

"A married woman shall have the right to acquire, hold, use, control, and dispose of property, * * * may contract and be contracted with, sue and be sued, in the same manner and *with the same consequences* as if she were unmarried." (Italics ours.)

No State has gone further than this in the enlargement of the contractual rights and obligations of married women. The fact that the statute of 1887, directly prohibiting the formation of a partnership between man and wife, was repealed, and the present provisions have been made in such sweeping terms, is more than indicative of the fact that now in Virginia the wife may be the partner of her husband on the same basis as if unmarried.

E. M. P.

⁶ *Swan v. Caffé*, 122 N. Y. 308, 25 N. E. 488; *Schlapbach v. Long*, 90 Ala. 525, 8 So. 113; *Louisville R. Co. v. Alexander* (Ky.), 27 S. W. 981.

⁷ *Laws*, N. Y. 1860, c. 90, § 2.

⁸ *Code Ala.*, 1886, §§ 2342, 2349.